

HON' BLE SRI JUSTICE SURESH KUMAR KAIT
&
HON' BLE SRI JUSTICE MS.J. UMA DEVI

CrI.A. No. 958 of 2012

JUDGMENT:- (ORAL)

(Per Hon' ble Sri Justice Suresh Kumar Kait)

This Criminal Appeal is preferred by the State against the judgment dated 09.05.2011 delivered in S.C.No. 611 of 2010 by the Principal Sessions Judge, Karimnagar whereby all the accused i.e. A1 to A6 were acquitted of the charged offences.

The brief facts of the prosecution case are that PW1 – Deeti Padma filed a complaint before the Sub-Inspector of Police, II Town Police Station, Karimnagar stating that they lived at Power House Colony, Godavarikhani for the past fifteen years and few months ago, they purchased a house at Shivajinagar, Karimnagar and have been staying there with their son and daughter. When they were at Godavarikhani, A1 - Sudheer was harassing her daughter – Deeti Mounika (PW2), who was 15 years old, by teasing her, for which, they gave a complaint and their son – Nagaraju admonished A1. As the accused tried to kidnap the complainant's son, however A1 kidnapped the friends of Nagaraju and compelled them to furnish their address, as such, a crime was registered in I Town Police Station, Godavarikhani. Since then, A1 and his friends were telephoning and threatening them to withdraw

both the cases. On 08.01.2010, between 09:30 p.m. and 10:00 p.m., when PW1, her husband – Shankaraiah, her son - Nagaraju, her daughter – Mounika and her brother-in-law's daughter – Navitha were present in the house, A1 to A6 and some others came by Autos armed with rods and Talwars, trespassed into the bed-room and caused injuries on the head and face of her husband, as a result, his brain portion came out and he died instantaneously (Shankaraiah is hereinafter referred to as "D1"). When PW1's son – Nagaraju tried to intervene, the accused beat him with rods and Talwars, as a result, his head was broken and he died on the spot (Nagaraju is hereinafter referred to as "D2"). Hence, PW1 lodged a complaint against A1 to A6, and after investigation, the police filed charge sheet which was registered as PRC No. 39 of 2010.

The learned Additional Judicial Magistrate of First Class, Karimnagar, committed the P.R.C. to the Sessions Court, Karimnagar.

Charges under Sections 148 and 447 IPC against A1 to A6, under Section 302 IPC against A1 and A2 and under Section 302 read with 149 IPC against A1 to A6 were framed, read over and explained to them in Telugu to which they pleaded not guilty and claimed to be tried.

To substantiate the case of the prosecution, it examined PWs.1 to 16 and got marked Exs.P1 to P17 and M.Os.1 to 10. No defence witnesses were examined nor got marked any documents.

After closure of the prosecution evidence, the accused were examined under Section 313 Cr.P.C. wherein they denied the incriminating material appearing against them in the evidence of the prosecution witnesses.

After considering the evidence on record, the trial Court found A1 to A6 not guilty of the charged offences and acquitted them. Hence, the present appeal is preferred by the State.

The learned Additional Public Prosecutor appearing on behalf of the appellant – State has contended that PW1, in her deposition, stated that on 08.01.2010, between 09:30 p.m. and 10:00 p.m. herself, her husband, son, daughter and her brother-in-law's daughter were present at the scene of offence. While she and her husband were in the bed-room their children were sleeping in the hall. At that time, all the accused removed the small shutter, gained entry into the bed-room and assaulted her husband with iron rods and swords indiscriminately, due to which, his head was broken and the brain matter came out and he died instantaneously. When PW1's son intervened, A1 and his friends attacked him on the

head with iron rods and swords, as a result, he also died on the spot. When the remaining persons tried to interfere, the accused threatened them that they would also be killed. When they rushed out and raised cries, all the accused escaped.

The learned Additional Public Prosecutor further submits that PWs.1, 2 and 9 saw the occurrence of offence while the accused were attacking D1 and D2 and their evidence is consistent, but the trial Court erroneously discarded their evidence. These three are eye-witnesses who deposed on the same lines as deposed by PW1. Moreover, PW9 had identified the accused in the Test Identification Parade.

The learned Additional Public Prosecutor further submits that PW2 is the daughter of PW1 and PW3 is the son of PW1's brother-in-law. PW4, who is the brother-in-law of D1, came and saw both the deceased with injuries. When enquired, PW1 stated to him that A1 to A4 killed them. PW5 is the younger son of PW1 and D1. He deposed that after receipt of information about the death of his father and brother, he came to Karimnagar and saw his brother –Nagaraju lying dead with injuries in the veranda and his father lying dead in the bed-room. He stated that A1 to A6 came to his house armed with iron rods and swords and killed his father and brother. He identified A1. PW7 is an R.T.C. employee who saw the

dead bodies of D1 and D2. According to him, PW1 told him that the accused came from Godavarikhani and murdered her husband and son. She is the attestor of Exs.P3 and P4 – inquest reports of D1 and D2 respectively.

The learned Additional Public Prosecutor submits that according to PW9 - Navitha, who is the daughter of PW1's brother-in-law, on 01.01.2010, when she along with Mounika and Nagaraju were watching T.V., seven or eight members entered the house by lifting the shutters of the shop. She gave names of A1 and A3 to A6 who assaulted D1 and D2 with iron rods and swords and also threatened her and her sister that they would also be killed. She stated that she gave statement before the Magistrate and deposed about the complaint given at Godavarikhani.

The learned Additional Public Prosecutor submits that the iron rod seized from A1 is marked as M.O.1. and the iron rod seized from A2 is marked as M.O.5. Panchanamas were marked as Exs.P6 and P7. PW11 found all the accused in the police station and attested the arrest report. PW12 is the Magistrate who conducted Test Identification Parade. PW13 is the Doctor, who conducted post-mortem examinations over the dead bodies of D1 and D2 under Exs.P10 and P11 respectively. PW14 deposed that he registered the case.

PWs.15 and 16 deposed about the investigation done by them and filing of charge sheet.

The learned Additional Public Prosecutor submits that in spite of the fact that PWs.1, 2 and 9, the eye-witnesses, named the accused who are identified by PW9, the trial Court having discussed all the overt acts committed by the accused, however acquitted them of the charged offences.

It is pertinent to mention here that A2 died during trial. A1 died during pendency of the appeal, as such, the present appeal is dismissed as abated against A1 by order dated 18.09.2018 passed by this Court.

Now, the only question that falls for consideration before this Court is whether A3 to A6 are rightly acquitted by the trial Court or not?

The evidence of PWs.1, 2 and 9, who are eye-witnesses to the occurrence of offence, is that they do not know the names of the accused, but they came to know their names through D2. In the statements recorded by the Magistrate, PWs.1 and 2 gave the names of A1, A2, A5 & A6, but they have not given the names of others. In cross-examination, PW2 stated that all the six accused, who are present in the Court, only came to their house on that night and no one else. PW9 stated that she does not know any of the accused but she identified A1 to A6. According to her, seven or eight members

came into the house by removing shutters. She added that A1 beat her and her sister – Mounika and threatened that they would be killed if they raised cries. She admitted in her cross-examination that she does not know the name of A1 when PW2 filed a case against him and she came to know the names of A2 to A6 through D2-Nagaraju when his friends were kidnapped.

It is pertinent to mention here that PWs.1, 2 and 9 categorically admitted that the police visited the scene of offence during night time after the incident, but they have not lodged any complaint. PW14 – Sub-Inspector of Police stated that he went to the house of the deceased at about 08:00 A.M. on the next day of the commission of offence and took the complaint from PW1 and registered the same.

The learned trial Court has observed in the impugned judgment that this is a peculiar case where the investigating agency exhibited negligence in taking the complaint belatedly and failing to register the case against all the persons mentioned therein. It is not that the evidence of blood relatives and other relatives should be discarded on the ground of relationship, but their evidence should be scrutinized with care and caution. The motive of the accused for committing murder is that A1 teased PW2 by following her when she was studying at Godavarkhani. She gave complaint

to the police, and even thereafter, A1 used to telephone and compel her to marry him, as such, they shifted their family to Karimnagar and residing there. It is further stated that A1 along with his friends, in order to know PW2's address at Karimnagar, wanted to kidnap D2, but kidnapped his friends. There was a complaint regarding the offence "kidnapping", but who filed the complaint and against whom it was filed, is not on record.

The trial Court further observed that though teasing is the main motive for commission of murder, the Investigation Officer failed to take those complaints and not even obtained copies thereof and filed before the Court. He has not explained any reason as to why he failed to register case against all the accused found in Ex.P1.

After going through the evidence, it is clearly established that omnibus allegations are made against the accused that they gained forcible entry into the bed-room of PW1 and beat her husband - D1 indiscriminately with iron rods and swords, as a result, his brain portion came out and he died instantaneously. His dead body was found in the bed room. According to PWs.1, 2 and 9, D2 was killed by A1 and his friends when he tried to interfere. But it is not established who beat him and with what weapon. None of the witnesses has stated this fact. According to PW1, A1 to A6,

Bajju, Ahmed Pasha, Praveen and some others entered the room with iron rods and Talwars and killed her husband – D1. When it is mentioned in the complaint that apart from A1 to A6, other persons also entered the house, then there is every possibility that not only A1 to A6 but others might have caused injury, but there is no specific overt act mentioned in the complaint as to who committed murder. PW9 deposed that seven or eight members entered the house, but she identified only A1 to A6.

In the case of Eknath Ganpat Aher and Others v. State of Maharashtra and Others reported in [2010(3) ALT (CrI.) 253 (SC)] it is held that in a case of group rivalries and enmities, general tendency is to rope in as many persons as possible as having participated in the assault. In that case, it was also held that not even a single eye-witness was able to categorically name a particular accused who had inflicted injuries to the deceased or any of the injured witnesses and only vague and omnibus statements were made, and in such a situation, the Court has to look into their evidence cautiously and sift it with care.

The trial Court observed that regarding non-mentioning of names of three persons in the F.I.R., while the learned counsel for the accused placed reliance on the judgment in Mandla Ranga Swami and Others vs. State of A.P., reported

in [2008(2) ALT (CrI.) 47 (DB) (AP)], argued that if the presence of original accused is ruled out, the substantial version presented by PWs.1, 2 and 9, even though consistent, ceases to be trustworthy.

As discussed above, there is a delay in registering the F.I.R. and there are no specific overt acts against any one of the accused and there are admittedly some others who entered the house of PW1, but their complicity is not mentioned. PW1 admitted in her cross-examination that someone present there, prepared Ex.P1 – complaint on her dictation as she is illiterate, and after the contents were read over, she signed on it. She admitted that during the inquest she did not disclose the names of Bajju, Ahmed Pasha and Praveen. She also admitted that she stated the names of A1, A2, A5 and A6 before the Magistrate at the time of recording of statement.

On the issue of arrest of the accused, there are conflicting versions of the witnesses. According to the police, the accused were arrested at Kummarikunta village which is at a distance of 45 kms. away from Karimnagar in the presence of PWs.10 and 11 and their confession statements were recorded. PWs.10 and 11 stated that they were called to the police station where A1 to A6 were present and the police recorded their statements. PW1 stated that on the

very next day of the incident, she came to know that the police arrested the accused and PW9 went and saw the accused in the police station. PW9 stated that a day after the occurrence, she came to know that the police arrested the accused and her father saw them but she did not go to the police station. Though PW9 identified all the accused in the Test Identification Parade conducted by the learned Magistrate, the accused stated in the examination under Section 313 Cr.P.C. that she saw them in the police station. Hence, there is any amount of doubt regarding their arrest as the accused were in the custody of the police even prior to 15.01.2010.

In addition to the above, PW1 stated that PW9 – Navitha saw the culprits two or three days after the occurrence of the offence. The so-called eye-witness identified only few persons among the accused. Though they stated that they do not know the accused, they did mention their names.

PWs.7 and 8 are the inquest panchayatdars. PWs.4 and 5 are friends of D2 who reached the scene of offence half an hour after the occurrence and their evidence is only hearsay. There are inconsistencies and infirmities in the evidence of PWs.1, 2 and 9.

As discussed above, no specific overt acts are attributed to the accused. The police have not registered the case

against all the accused whose names are mentioned in Ex.P1 – complaint. Hence, the learned trial Court, keeping in view the aforesaid facts and after appreciating the evidence in detail, has rightly acquitted the accused.

For the foregoing discussion and in view of the fact that the learned Public Prosecutor has failed to give any explanation regarding non-mentioning of the names of all the accused in F.I.R. as mentioned in Ex.P1 and the delay in lodging the F.I.R and the Test Identification Parade conducted by the Magistrate, we find no merit in the Criminal Appeal, and the same is accordingly, dismissed.

As a sequel, Miscellaneous Petitions, if any pending, shall stand disposed of as infructuous.

25.09.2018

SURESH KUMAR KAIT, J

MS.J. UMA DEVI,J

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